

RESUMPTION OF THE JULY 16, 2014 FULL COMMITTEE HEARING, "WHITE HOUSE OFFICE OF POLITICAL AFFAIRS: IS SUPPORTING CANDIDATES AND CAMPAIGN FUNDRAISING AN APPROPRIATE USE OF A GOVERNMENT OFFICE?"

HEARING

BEFORE THE

COMMITTEE ON OVERSIGHT
AND GOVERNMENT REFORM
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

JULY 25, 2014

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**RESUMPTION OF THE JULY 16, 2014 FULL
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FICE OF POLITICAL AFFAIRS: IS SUP-
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FUNDRAISING AN APPROPRIATE USE OF A
GOVERNMENT OFFICE?”**

Friday, July 25, 2014

HOUSE OF REPRESENTATIVES,
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,
WASHINGTON, D.C.

The committee met, pursuant to call, at 9:09 a.m., in Room 2154, Rayburn House Office Building, Hon. Darrell E. Issa [chairman of the committee] presiding.

Present: Representatives Issa, Meadows, Cummings, Maloney, Norton, Tierney, Clay, Lynch, Cartwright, Duckworth, Kelly, Welch, Cardenas, and Horsford.

Staff Present: Alexa Armstrong, Legislative Assistant; Melissa Beaumont, Assistant Clerk; Molly Boyd, Deputy General Counsel and Parliamentarian; Ashley H. Callen, Deputy Chief Counsel for Investigations; Steve Castor, General Counsel; John Cuarderes, Deputy Staff Director; Lamar Echols, Counsel; Adam P. Fromm, Director of Member Services and Committee Operations; Linda Good, Chief Clerk; Caroline Ingram, Counsel; Mark D. Marin, Deputy Staff Director for Oversight; Ashok M. Pinto, Chief Counsel, Investigations; Andrew Rezendes, Counsel; Laura L. Rush, Deputy Chief Clerk; Jessica Seale, Digital Director; Andrew Shult, Deputy Digital Director; Jonathan J. Skladany, Deputy General Counsel; Rebecca Watkins, Communications Director; Krista Boyd, Minority Deputy Director of Legislation/Counsel; Marianna Boyd, Minority Counsel; Jennifer Hoffman, Minority Communications Director; Julia Krieger, Minority New Media Press Secretary; Elisa LaNier, Minority Director of Operations; Dave Rapallo, Minority Staff Director; and Michael Wilkins, Minority Staff Assistant.

Chairman ISSA. Committee will come to order.

We are here to continue a hearing that began July 16th, 2014, called “White House Office of Political Affairs: Is Supporting Candidates and Campaign Fundraising an Appropriate Use of a Government Office?” The purpose of the hearing is to gather facts about the White House Office of Political and Strategic Outreach.

I would like to note for the record Mr. David Simas, director of the Office of Political Strategy and Outreach and assistant to the President, is in fact not present at the hearing today. Mr. Simas

was invited to testify to give committee members and the American people an opportunity to hear from the head of an office that has, under several previous administrations, misused government resources for political purposes.

Despite being under subpoena, Mr. Simas failed to appear at the hearing on July 16th. I gave him a second chance to appear today to fulfill his obligation under a lawful subpoena.

At this time, I would like to place in the record the correspondence between the committee and the White House regarding this matter.

The White House has informed my staff for the first time this morning at 7:30 a.m. that Mr. Simas would not be present at today's hearing. We continue to work with the White House staff on proposed ways to resolve this. However, today's failure to appear is noted for the record and is not excused.

Mr. Cummings, do you have any remarks?

Mr. CUMMINGS. Mr. Chairman, I just have a brief statement.

Chairman ISSA. The gentleman is recognized.

Mr. CUMMINGS. And just one question. I just wanted to highlight the letter, the last correspondence that we just put in the record, for the members to—I want to draw their attention to it and aware—it is very brief. It is only three or four sentences. I received your—this is to the chairman dated July 24, 2014: I received your letter of today's date a little after 7:00 p.m. this evening. This is yesterday. My staff has reached out to yours to discuss these issues in good faith. I trust that they will report back to us on their progress. In light of this, it would be helpful if you would withdraw the subpoena to Mr. Simas as we discuss whether we can reach an appropriate accommodation. Sincerely, W. Neil Eggleston, Counsel to the President.

The end part of this is very brief, Mr. Chairman. Mr. Chairman, before we proceed any further, I just want to make sure, confirm what we talked about already, that we understand that we are doing—what we are doing this morning so our members will be clear. You resumed this hearing this morning even though we knew Mr. Simas was not coming. And earlier this morning, your staff told special counsel, Carolyn Lerner, not to come to the hearing today, and so we won't have her testimony.

My understanding is that you plan to move next to the business meeting to consider your resolution on Mr. Simas. And is that correct?

Chairman ISSA. At this time, based on his non-attendance, yes.

Mr. CUMMINGS. And just to be clear, I have a statement I would like give. And I am happy to wait until the business meeting to give it, but I want to make sure that I will have that opportunity, and you told me that I would.

Chairman ISSA. That is correct. Although if you'd like to give it now, you may.

Mr. CUMMINGS. No. I will wait till the business meeting.

Chairman ISSA. Okay.

Mr. CUMMINGS. Thank you.

Chairman ISSA. Thank you very much.

Mr. Cummings, just in brief response, as you know, we have an inherent obligation of oversight. The question before us today is a

very straightforward question: Are we doing oversight? Is it our right and our obligation to do oversight? I believe it is. There is a long precedent that when this committee asks for someone appropriately, and they are not made available, and we believe, the chair believes we need that person—and in the case of an office of only four people, the head is not a big ask—to be the most appropriate, that we expect that person to come.

The record will show that we have negotiated and attempted alternatives, including discussions about possible transcribed interviews and other nonpublic ways to get the same information. However, the subpoena is, in my opinion, inappropriate to lift, because ultimately, lifting the subpoena implies and would mean that he may not come. It is the considered opinion of this committee chair that we have an absolute right and obligation to investigate, not any wrongdoing, no predicate or claim of wrongdoing—however, this is an office that has a past, that past, under both Republicans and Democrats, have been questioned, and there has been an odd situation of saying it was wrong, but keeping it for 3 years; shutting it down and then reconstituting it much smaller.

And as you and I spoke, and if you don't mind, something that we said in private, the question that came from the briefing, which I was appreciative that the White House did give us, was that this office controls only the President and the First Lady, and it does not control the members of the Cabinet.

As the earlier proceeding made clear, we have an obligation to look at all government officials, whether covered by the Hatch Act or not, and find out whether or not they are doing political activity with government money and government time unless explicitly exempted. It is the considered opinion at this time of the committee and Ms. Lerner, the counsel, that the four people whose purpose it is to schedule the president and the First Lady, who are exempt from the Hatch Act, is in fact potentially a necessary office. Because this office was closed by this President as wrong and, if you will, unnecessary, operated for 3 years, without finding out if those four individuals are necessary and how their use of our taxpayer dollars are being used, is a question.

And when we reconvene, and probably a second hearing after Mr. Simas appears at the first hearing, will be to ask the second question: If this office controls only the President and First Lady, and there are hundreds of potential Cabinet and sub-Cabinet officers who then are controlled to go to places where they meet, participate either overtly in political activities or are scheduled to be in districts of Senators and—or States of Senators and districts of House Members at times when it might be beneficial to their campaign, so literally fundraising or, less literally, support of candidates' reelection, who is scheduling them? How are they scheduling them?

This was intended to be a short, and I hope it still will be, oversight of a relatively small but, in the past, controversial office consistent with our requirement to do oversight even without a predicate of wrongdoing. I do want to make sure the committee understands on both sides of the aisle that we were going to ask the question as to the President and First Lady, and we believe we will get satisfactory answers. We then must move on to the Cabinet.

And, as you know, under this President, not uniquely, it happens with other past Presidents, we have had two Cabinet officers who did in fact commit Hatch Act violations. That tells us that we have a control responsibility with a predicate, an inherent predicate, for making sure that the organizational systems for Cabinet officers and the like is covered. I claim no predicate for the office of the President. I claim oversight, and I believe you would support me in that principle.

I think we do have a predicate in the case of the Cabinet, but we have no ongoing wrongdoing accusation about the cabinet. We simply have a history under Presidents of both parties that this has been an area of concern and past violations.

So this has been communicated back and forth with the White House. They understand this is not alleging a scandal at any level, but in fact doing the oversight that we are pledged to do and that cannot be done by the executive branch, can only be done by our branch. So I look forward to your remarks when we open for the business meeting. I take it very serious that we are going to likely find that—that the committee believes Mr. Simas has a responsibility to be here and find that, once again, we are going to insist that he respond to the subpoena either in its original form or, if we can reach a mutually agreeable accommodation, that accommodation.

Mr. CUMMINGS. Will the gentleman yield?

Chairman ISSA. Of course.

Mr. CUMMINGS. First of all, Mr. Chairman, I thank you for what you just said, and what you said is accurate as to what our discussions have been. I want to make that very clear.

With regard to—I want to—so that the public and the committee will be clear, so there are no—and I realize that you are not saying that there needs to be, but you are saying that, if I understand it, to your knowledge, Mr. Simas has done nothing wrong and his office has done nothing wrong.

Chairman ISSA. We are accusing neither the President nor this four-person office of any wrongdoing. There is a past history that you and I are both aware of that caused an opinion that it needed to be closed and the closing of the office. And so inherently when an office is closed, one might say in scandal, and that is a multi-Presidential scandal, and then reopened, it is probably inherently the most important oversight we can do and say, in the past, this didn't work properly. How do we know it will work properly going forward?

I believe the American people have an obligation—or we have an obligation to make sure that we spend the money well and that the American people have a comfort level, but again, you are exactly right, Mr. Cummings: I allege no ongoing wrongdoing, but it is more appropriate when you have a history like this to look at it than the average four-person office in the White House.

Mr. CUMMINGS. And there were two Cabinet members that you mentioned. And, of course, we would agree that those offenses, Hatch Act offenses, took place long before this incident, the opening of this office.

Chairman ISSA. That is correct, although I believe one of them likely took place before the closing of its previous office, but—and

as you and I talked about in the White House briefing, they told us they are not controlling through this office the activities of members of the Cabinet, which actually raises the concern that I think you and I are going to have to mutually work on is, if not this office, then who do we look to to make sure that these inherent calls from a party office, currently the Democratic party, but it could become the Republican party at some day in the future, who allows those, who coordinates them, who spends the government dime when that call comes in scheduling or talking about why the Secretary of blank should go support the Congressman of what?

Mr. CUMMINGS. And would the gentleman yield?

Chairman ISSA. Of course.

Mr. CUMMINGS. So as I hear you, bringing in Mr. Simas in one respect is sort of trying to create a preventive, do something to prevent something that could possibly happen in the future based upon what happened under previous administrations. Is that what you are trying to say?

Chairman ISSA. Not only that, but I think in a sense, and I hope we all look to this as we look at this office and the others, if Congress looks at a system and says, we see nothing wrong with the system, and then the system is faithfully executed and something bad happens, then it is not a scandal; it is a need for further reform.

And I will give a current example. We voted, we broadly voted in 2008 for a law on immigration that now is at the center of some problems, and we as a government are looking to fix something, but it wasn't—it isn't a scandal that people are taking advantage of a 2008 law, and the American people, I think, currently understand the immigration question; it is simply something we looked at, we voted for and now we see that.

If we look into these various activities and we see nothing wrong in the system that is explained to us and in what we are told is happening, then, in fact, in a sense, we add to the ease with which the administration and future administrations can feel this is an appropriate way to operate. It is one of the reasons that we have been communicating with Carolyn Lerner. It is one of the reasons that we want her input, because in the past, she issued a scathing report finding that under both President Bush and in an ongoing sense through 2011, the administrations of those two Presidents were using an office that was inherently flawed. And that is what we are making sure we look at before this goes much longer.

Mr. CUMMINGS. Will the gentleman yield?

Chairman ISSA. Thank you. I will.

Mr. CUMMINGS. And then I will just have one or two more questions. Mr. Chairman, you know, when I read the letter that you wrote yesterday, I think it was, there were two new issues that came up with regard to the President going on trips, official trips and then doing some campaigning, if I remember correctly, and I had not seen those allegations before. The reason why I raise this is because—

Chairman ISSA. And, Mr. Cummings, if you could yield.

Mr. CUMMINGS. Sure.

Chairman ISSA. It is not an allegation. It is an observation.

Mr. CUMMINGS. Okay.

Chairman ISSA. All Presidents do both, and this office's coordination is a very simple question of it. So I appreciate that.

Mr. CUMMINGS. And I guess what I am concerned about is—well, two things. One, it seems as if—I just wonder when the questions end. In other words, this was a question that was presented yesterday, and Mr. Simas's—I am sorry, Mr. Eggleston's response was, Well, you know, we will continue to work with you. And it seems like—I am just wondering whether there is a constant movement of the goalposts.

And the public needs to know that our staffs met with the White House for 75 minutes, and they answered just about every question, they—they left the meeting probably thinking they did, and then some other questions came up. And I know that things like that happen, but I guess, at some point, where does it end, but more significantly, you understand the concern of the White House. And it is not just this White House. There will be future folks who occupy the White House who will be of the Republican party, and we may be up in heaven somewhere, but—

Somebody laughed, but anyway.

Chairman ISSA. What you are implying is this isn't heaven?

Mr. CUMMINGS. But I guess my concern is the White House's concern, and I think it would be under a Republican, too, there are certain advisors that they want to make sure that they have this freedom to talk to—

Chairman ISSA. And I want to bring this to a close—

Mr. CUMMINGS. Sure.

Chairman ISSA. —and we will bring up the next part, but the gentleman's point is a good one. I want to make sure that we come to an understanding. Oversight is ongoing, and we are not looking to ask about, on a trip, what did the President say or the communication. We understand the nature of that advice. And we are not asking why did—why did you decide, in consultation with the President, to have the President do X and Y?

The organizational questions, which included the one in the letter, are, how do you decide? What is the system? And how do we know, again, that dollars paid to Federal employees are, in fact, even though they are clearly supporting campaign efforts, that they are absolutely necessary and the best possible use of the President's time and money and the people's time and money, simply because we have a unique situation with the President, that we don't want him going down to the Democratic National Committee for briefings. We don't want the First Lady out and about or having to go back and forth to the residence. These are accommodations unique, in that we are using taxpayer dollars in support of campaigns, but only because of the unique security considerations and so on of the President.

So, for that reason, the process is in fact important, but we are not moving the goalposts, to be honest. We have a lot of questions. I don't know that all have been asked. And I am absolutely positive that if we go through this process, many of your members will have additional questions, and we would want to make sure that all relevant questions, all questions related to the American people's taxpayer dollars and the necessity of this are answered. So I look forward to eventually having that dialogue.

Mr. CUMMINGS. Thank you, Mr. Chairman.

Chairman ISSA. For all involved, this meeting, this committee stands in recess.

Mr. CUMMINGS. It is estimated that we will come back at 10:15, folks, 10:15.

[Whereupon, at 9:28 a.m., the committee was recessed.]

APPENDIX

MATERIAL SUBMITTED FOR THE HEARING RECORD

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February 10, 2014

The Honorable Carolyn Lerner
U.S. Office of Special Counsel
1730 M Street NW
Suite 218
Washington, D.C. 20036-4505

Dear Ms. Lerner:

I am writing to request documents related to the recent decision by the White House to reopen the White House Office of Political Affairs (OPA).¹ Reestablishing OPA raises serious concerns about the illegal use of taxpayer funds to support congressional campaigns during the 2014 midterm elections.

On January, 24, 2014, the White House announced the reinstatement of OPA.² Apparently, the reasoning behind reopening OPA is “defending Democratic control of the Senate and taking back the House from Republicans.”³ The new OPA has been described as “a one-stop shop for all things midterms.”⁴ White House officials reportedly stated that “it makes more sense to have a political office during a congressional year to focus attention on candidate needs, including fund-raising.”⁵ The reopening of OPA comes just three years after OSC rebuked OPA for inappropriate uses of taxpayer funds.⁶

¹ 5 U.S.C. § 1216 (a)(2).

² The White House, Press Release, *President Obama Announces Key White House Posts* (Jan. 24, 2014), available at <http://www.whitehouse.gov/the-press-office/2014/01/24/president-obama-announces-key-white-house-posts> (last visited Jan. 31, 2014).

³ Michael D. Shear, *White House Comeback for Political Affairs Office*, N.Y. TIMES, Jan. 24, 2014, available at http://www.nytimes.com/2014/01/25/us/politics/white-house-comeback-for-political-affairs-office.html?_r=0 (last visited Jan. 31, 2014) [hereinafter *Comeback for Political Affairs Office*].

⁴ Edward-Isaac Dove, *White House to Launch New Political Office*, POLITICO, Jan. 24, 2014, available at <http://www.politico.com/story/2014/01/white-house-office-of-political-strategy-outreach-102582.html> (last visited Jan. 31, 2014) [hereafter *White House to Launch New Political Office*].

⁵ *Comeback for Political Affairs Office*, supra note 3.

⁶ See U.S. Office of Special Counsel, *Investigation of Political Activities by White House and Federal Agency Officials During the 2006 Midterm Elections* (Jan. 2011), available at <https://www.judicialwatch.org/files/documents/2011/2006MidTermElectionWHPolActivities.pdf> (last visited Jan. 31, 2014) [hereafter OSC Report].

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During the 2008 presidential election, then-Senator Barack Obama often criticized the political focus of the George W. Bush White House,⁷ stating that “the days of using the White House as another arm of the Republican National Committee are over.”⁸ Despite the rhetoric, OPA continued operating during the first two years of the Obama Administration. In anticipation of the 2012 election, OPA operations were moved to the Democratic National Committee (DNC).⁹ In fact, the DNC and OPA were so closely aligned that the White House political director took over the “day-to-day duties of running the Democratic National Committee.”¹⁰ President Obama reportedly eliminated OPA to prevent duplication with the DNC and Obama reelection campaign.¹¹

The Hatch Act prohibits federal employees from engaging in certain types of political activities.¹² In particular, it prohibits federal employees from using their official authority or influence for the purpose of interfering with or affecting the results of an election.¹³ When acting in an official government capacity, the Hatch Act prohibits an employee from activity directed at the success or failure of a political party, candidate for partisan political office, or partisan political group.¹⁴ Select officials who are permitted by exception to engage in political activity cannot use U.S. Treasury funds to pay for political activities.¹⁵

This Committee has a long, bipartisan history of examining Hatch Act enforcement. For example, in 2007, former Committee Chairman, Rep. Henry A. Waxman, initiated a series of investigations into allegedly improper political activity in the Executive Branch.¹⁶ Those investigations focused on presentations given by White House political staffers on the current political environment to the President’s political appointees at various departments and agencies.¹⁷ The investigations also centered around allegations that the White House political staff coordinated the travel of senior administration officials such as Cabinet secretaries.¹⁸ At the end of the Committee’s

⁷ *Comeback for Political Affairs Office*, *supra* note 3.

⁸ See Josh Gerstein, *New Obama Politics Shop Faces Old Questions*, POLITICO, Jan. 30, 2014, available at <http://www.politico.com/story/2014/01/barack-obama-administration-white-house-office-of-political-affairs-102881.html> (last visited Jan. 31, 2014) [hereafter *Politics Shop Faces Old Questions*].

⁹ Jeff Zeleny, *Obama Will Move Political Operations to Chicago*, N.Y. TIMES, Jan. 20, 2011, available at <http://www.nytimes.com/2011/01/21/us/politics/21obama.html> (last visited Jan. 31, 2014).

¹⁰ *Id.*

¹¹ *Id.*

¹² 5 U.S.C. §§ 7321-632.

¹³ 5 U.S.C. § 7323(a)(1).

¹⁴ U.S. Office of Special Counsel, *Less Restricted Employees – Political Restrictions and Prohibited Activities*, available at <http://www.osc.gov/haFederalLessRestrictionandActivities.htm> (last visited Dec. 6, 2013).

¹⁵ 5 U.S.C. § 7324(b); see also OSC Report at 74, *supra* note 6 (stating that “although the plain language of the Hatch Act and its regulations place no limitations on the extent to which § 7324(b) employees can engage in political activity on duty and in the federal workplace as long as the costs are reimbursed, OSC maintains that imposing no restraints at all goes beyond what Congress intended).

¹⁶ Democratic Staff, H. Comm. on Oversight and Gov’t Reform, 110th Cong., *The Activities of the White House Office of Political Affairs* (Oct. 2008).

¹⁷ *Id.*

¹⁸ *Id.*

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investigation, both Rep. Waxman and then-Ranking Member Tom Davis concluded that legislation to eliminate OPA was necessary.¹⁹

In 2007, during the Waxman investigation, OSC simultaneously began investigating potential Hatch Act violations in the George W. Bush Administration.²⁰ OSC released the findings of its OPA Hatch Act investigation in the form of a 118-page final report on January 21, 2011 – two years after the Administration ended and nearly five years after the 2006 midterm elections.²¹ The report called into question the existence of OPA and found that political activity undertaken by OPA violated the Hatch Act.²² Specifically, OSC found that OPA violated the Hatch Act by working with the RNC to develop a “target list” of Republicans in close congressional races, encouraging high-level political appointees’ travel to events with Republican candidates, and keeping track of Republican candidates’ fundraising efforts.²³ The report found those activities constituted “political activity” because they were directed at the electoral success of Republican candidates and the Republican Party.²⁴ The report also found that although senior employees at OPA were exempt from the Hatch Act, they unlawfully used taxpayer funds for political purposes.²⁵

The rebranded version of OPA appears to be undertaking precisely the same political activities with which OSC found fault in its 2011 report. While the new OPA has been renamed the “Office of Political Strategy and Outreach,” OSC previously found that simply renaming OPA is not a “viable solution under the law.”²⁶ Apparently, the new OPA will focus on the needs of Democratic candidates for congress, including fundraising.²⁷ OPA will even sign-off on “direct mail and email blasts.”²⁸ Further, according to White House officials, the new political director will be permitted to engage in “overtly partisan activity” on White House grounds.²⁹

The reasoning behind the Obama White House reopening OPA is particularly troubling. An “overtly partisan” office in the White House that coordinates with congressional candidates seems to be precisely the type of “political boiler-room” prohibited by the Hatch Act. In fact, OSC wrote in its Hatch Act report that “strategically

¹⁹ Democratic Staff, H. Comm. on Oversight and Gov’t Reform, 110th Cong., “The Activities of the White House Office of Political Affairs,” Oct. 2008, available at <http://oversight-archive.waxman.house.gov/documents/20081015105434.pdf>.

²⁰ See Stephen Barr, *That Whistle’s Been Blowing for Two Years*, WASH. POST, Oct. 12, 2007, available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/10/11/AR2007101102396.html> (last accessed Jan. 31, 2014).

²¹ OSC Report, *supra* note 6.

²² See *id.* at 75.

²³ *Id.* at 44.

²⁴ *Id.*

²⁵ *Id.* at 74.

²⁶ *Id.* at 75.

²⁷ *Comeback for Political Affairs Office*, *supra* note 3.

²⁸ *White House to Launch New Political Office*, *supra* note 5.

²⁹ *Politics Shop Faces Old Question*, *supra* note 7.

The Honorable Carolyn Lerner
February 10, 2014
Page 4

supplying targeted candidates with administration support to secure electoral gains” violates the Hatch Act.³⁰

So the Committee can effectively consider whether taxpayer money is being used to advance the interests of Democratic Congressional candidates and the Democratic Party, please produce the following documents and information as soon as possible, but by no later than noon on February 17, 2014:

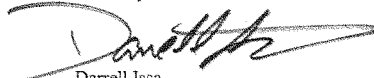
All documents and communications, including e-mails, between OSC and the White House referring or relating to the Office of Political Strategy and Outreach or the reopening of the Office of Political Affairs.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at “any time” investigate “any matter” as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee’s request.

Please deliver your responses to the Majority Staff Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers to receive all documents in electronic format.

Thank you for your attention to this matter. Please contact Lamar Echols of the Committee staff at (202) 225-5074 with any questions about this matter.

Sincerely,



Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah Cummings, Ranking Minority Member

³⁰ See OSC Report, *supra* note 6, at 67.



The Special Counsel

U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

February 11, 2014

The Honorable Darrell E. Issa
Chairman
U.S. House Committee on Oversight and Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Issa:

Thank you for your February 10, 2014, letter concerning the White House and the Hatch Act.

The U.S. Office of Special Counsel has no documents, communications, or other information responsive to the Committee's request.

Thank you, and please let me know if I can be of further assistance.

Sincerely,

A handwritten signature in cursive script that reads "Carolyn Lerner".

Carolyn N. Lerner

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March 15, 2012

The Honorable Carolyn Lerner
U.S. Office of Special Counsel
1730 M Street, NW
Suite 218
Washington, DC 20036-4505

Dear Ms. Lerner:

I am writing to request that the U.S. Office of Special Counsel (OSC) open an investigation into whether Health and Human Services (HHS) Secretary Kathleen Sebelius violated the Hatch Act when she allegedly endorsed a state gubernatorial candidate during a public appearance. On Saturday, February 25, 2012, at an event in North Carolina, Secretary Sebelius reportedly stated, "[y]our lieutenant governor, Walter Dalton, who needs to be the next governor of North Carolina, is in the house."¹

The Hatch Act prohibits federal employees from engaging in certain types of political activities.² In particular, it prohibits federal employees from using their official authority or influence for the purpose of interfering with or affecting the results of an election.³ This Committee has a long, bipartisan history of examining Hatch Act enforcement. As a recent example, in 2007, the former Committee Chairman, Rep. Henry A. Waxman, initiated a series of investigations into allegedly improper political activity in the Executive Branch. Those investigations focused on presentations given by White House political staffers on the current political environment to the President's political appointees at various departments and agencies. They also centered on allegations that the White House political staff coordinated the travel of senior administration officials such as Cabinet secretaries.

According to news reports in *Politico* and the *Charlotte Observer*, both enclosed for your ready reference, Secretary Sebelius attended the North Carolina event in her official capacity.⁴ One of the event co-chairs stated that there was "no doubt" the Secretary was appearing in her

¹ Byron Tau, *Sebelius will reimburse taxpayers for 'political' trip*, POLITICO, Mar. 2, 2012, available at <http://www.politico.com/politico44/2012/03/sebelius-rescinds-endorsement-will-reimburse-taxpayers-116248.html>; see also Tim Funk, *Sebelius' comments seen as endorsement*, CHARLOTTE OBSERVER, Mar. 3, 2012, available at <http://www.charlotteobserver.com/2012/03/03/3065270/sebelius-comments-seen-as-endorsement.html>.

² 5 U.S.C. §§ 7321-6326.

³ 5 U.S.C. § 7323(a)(1).

⁴ Tau, *supra* note 1.

The Honorable Carolyn Lerner
March 15, 2012
Page 2

capacity as an Obama Administration representative.⁵ An ethics expert quoted in the *Politico* article observed that "[t]his would be a Hatch Act violation if the government paid for the trip, and it would also be a violation if her official title was used at the event or she in any way purported to speak in an official capacity in other parts of the speech."⁶

HHS has already stated that Secretary Sebelius will reimburse taxpayers for the trip because her policy speech included "political components."⁷ If she appeared in her official capacity, however, reimbursement for the cost of the trip does not remedy her endorsement of gubernatorial candidate Walter Dalton. Other factors to also consider are whether the invitations for the event included the Secretary's official title, how she was introduced at the event, and whether taxpayers were reimbursed for HHS staff who attended the event, apart from security personnel. A timely inquiry by OSC will provide clarification on the limits of political activity for Cabinet officials under the Hatch Act.

Thank you for your attention to this matter. Please contact Ashok Pinto or Jessica Donlon of the Committee Staff at (202) 225-5074 with any questions about this request.

Sincerely,


Darrell Issa
Chairman

Enclosures

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*; see also Funk, *supra* note 1.

POLITICO

Sebelius will reimburse taxpayers for 'political' trip

By [BYRON TAU](#)

3/2/12 4:24 PM EST

Secretary of Health and Human Services Kathleen Sebelius is backing off what sounded like an endorsement of North Carolina gubernatorial candidate Walter Dalton in a Tar Heel state appearance — a move that experts say may have run afoul of federal law preventing government employees from politicking on the job.

"Your lieutenant governor, Walter Dalton, who needs to be the next governor of North Carolina, is in the house," Sebelius said during an address to the gay rights group Human Rights Campaign last week, [the Charlotte Observer reports](#). Dalton faces a competitive Democratic primary and Sebelius' endorsement could be seen as the Obama administration picking favorites.

According to ethics experts, a key distinction in the law, called the Hatch Act, revolves around whether Sebelius was attending in an official or personal capacity. HHS told POLITICO that Sebelius went in her official capacity but will now reimburse taxpayers for the trip because of the political content that came up.

"The Secretary attended the Human Rights Campaign dinner in Charlotte to highlight the work of the U.S. Department of Health & Human Services on LGBT issues. The trip included political components, and so the federal government will not be paying for it," an HHS spokesperson told POLITICO.

The fact that Sebelius appeared in her official capacity was confirmed by one of the HRC gala co-chairs who said there was "no doubt" she was appearing as a representative of the Obama administration.

"This would be a Hatch Act violation if the government paid for the trip, and it would also be a violation if her official title was used at the event or she in any way purported to speak in an official capacity in other parts of the speech," ethics expert and former Bush administration ethics counsel Richard Painter told POLITICO.

"The bigger problem is that if this was an official capacity speech -- use of official title, etc. -- she should not have endorsed a political candidate; the Hatch Act prohibits it. Who paid for the trip is irrelevant," Painter said. "This is exactly the kind of screw up I worry about when cabinet officers are used for partisan political activity."

"It's just a real screw-up," said Painter, who has long advocated for rules barring cabinet officials and government employees from political events — and who admitted that the Bush administration too skirted some of the rules. "It's what happens when you roll out the cabinet people or get the senior administration people involved in partisan politics"

www.CharlotteObserver.com
 Posted: Saturday, Mar. 03, 2012

Sebelius' comments seen as endorsement

By Tim Funk

PUBLISHED IN: LOCAL NEWS

Kathleen Sebelius, President Barack Obama's secretary of Health and Human Services, is walking back what appeared to be an endorsement of Lt. Gov. Walter Dalton for N.C. governor during a speech last Saturday night in Charlotte.

And because her policy speech at the Human Rights Campaign gala included "political components," the federal government will not pay for Sebelius' trip to Charlotte, an HHS spokesperson said in response to questions from the Observer.

The HHS spokesperson also said this in the statement: "The secretary attended the Human Rights Campaign dinner in Charlotte to highlight the work of the U.S. Department of Health & Human Services on LGBT issues. The trip included political components, and so the federal government will not be paying for it."

On Saturday, Sebelius started her speech to about 1,400 people at the gay-rights fundraiser in the Charlotte Convention Center by acknowledging state and local politicians in attendance, including U.S. Sen. Kay Hagan, D-N.C., and Charlotte Mayor Anthony Foxx.

She also mentioned Dalton, saying, "Your lieutenant governor, Walter Dalton, who needs to be the next governor of North Carolina, is in the house."

Because Dalton has five Democratic primary opponents - including former U.S. Rep. Bob Etheridge and state Rep. Bill Faison - Sebelius' comments made some political observers wonder whether the Obama administration was signaling that it has a favorite in the race.

But a statement from an HHS spokesperson to the Observer made it clear that Sebelius did not mean to endorse Dalton in the primary.

"Outside of her planned policy remarks, she made some informal acknowledgements and comments and no endorsement was intended," said the HHS spokesperson.

Sebelius' comments also got some notice in Washington. One party official, familiar with what happened, accused Dalton of misleading Sebelius during a backstage meeting by presenting himself as the only Democratic candidate in the race.

"It was a bush-league move," said the party official, who asked not to be identified. "It was a clear lie of omission . . . and it left a bad taste in the mouth of party leaders in Washington."

Dalton spokesman Pearse Edwards acknowledged that Dalton met briefly with Sebelius before her speech, but "we did not have any prior knowledge that she was going to acknowledge his campaign for governor," he said.

Asked about the party official's charge, Edwards added: "That claim is ridiculous and false. We didn't request an endorsement and we didn't characterize our campaign in that manner."

Funk: 704-358-5703

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VACANCY

July 11, 2014

Mr. W. Neil Eggleston
Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Eggleston:

Yesterday, you wrote to me regarding the Committee's invitation for David Simas, the Director of the White House Office of Political Strategy and Outreach (OPSO), to appear before the Committee at a hearing on July 16, 2014.¹ The Committee invited Mr. Simas to testify after the White House ignored two prior requests for documents that would have helped the Committee understand whether OPSO is complying with the Hatch Act and other statutes that apply to the use of taxpayer funds for political activities.² Surprisingly, your letter states that the White House Counsel's Office has "made significant efforts" to "accommodate" the Committee's concerns,³ when in fact, the White House has yet to respond to the Committee's requests adequately. Consequently, I am left with no alternative but to use compulsory process to require Mr. Simas to appear before the Committee on July 16, 2014.

According to your letter, the invitation for Mr. Simas to testify "raises special concerns in light of the constitutional separation of powers."⁴ These concerns did not impede the ability of former Committee Chairman Henry A. Waxman to conduct similar inquiries. In 2007, Chairman Waxman initiated a series of investigations into allegedly improper political activity in the Executive Branch. During the Committee's investigation—which spanned nearly two years—the staff interviewed or deposed 18 political appointees, including President Bush's political directors, Ken Mehlman, Matt

¹ Letter from W. Neil Eggleston, Counsel to the President, White House, to Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform (July 10, 2014).

² Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to Denis McDonough, Chief of Staff, The White House (Mar. 18, 2014); Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to Denis McDonough, Chief of Staff, White House (May 27, 2014).

³ *Id.*

⁴ *Id.*

Mr. W. Neil Eggleston
 July 11, 2014
 Page 2

Schlapp, Sara Taylor, and Scott Jennings.⁵ The Committee received nearly 70,000 pages of documents from the White House and agencies, and also issued a subpoena to the Chairman of the Republican National Committee to obtain e-mail records.⁶

I first wrote to the White House on March 18, 2014, requesting documents and information related to the reopening of the White House Office of Political Affairs (OPA),⁷ as well as a briefing from White House staff.⁸ A March 26, 2014, response from your predecessor failed to even acknowledge the Committee's requests for documents and a briefing.⁹ In a second attempt to obtain the requested information, I wrote to the White House on May 27, 2014, requesting documents related to OPSO, and raising the possibility of using compulsory process to obtain the requested materials.¹⁰ You provided a response on June 13, 2014, again ignoring the Committee's requests for documents.¹¹ On July 3, months after the Committee's initial requests for documents and a briefing, I wrote to Mr. Simas, requesting his appearance at a hearing to explore whether OPSO is in compliance with the Hatch Act.¹²

In your letter of July 10, you provided 185 pages of documents, most of which consist of two Hatch Act reports—one released by this Committee under Chairman Waxman in 2008, and one released by the U.S. Office of Special Counsel in 2011—related to political activity in the Bush White House.¹³ Both are readily available online. You also offered to provide the briefing regarding OPSO that I initially requested on March 18, 2014—almost four months ago. I accept your offer to brief my staff in advance of next week's hearing. If, after the briefing, the Committee has no outstanding questions for Mr. Simas, I will reconsider whether it is necessary for him to appear at the hearing.

⁵ Democratic Staff, H. Comm. on Oversight & Gov't Reform, 110th Cong., *The Activities of the White House Office of Political Affairs* (Oct. 2008), available at <http://oversight-archive.waxman.house.gov/documents/20081015105434.pdf> [hereinafter OGR Report].

⁶ *Id.*

⁷ In Jan. 2014, the Office of Political Affairs (OPA) was rebranded the Office of Political Strategy and Outreach. However, the Office of Special Counsel (OSC) previously found that simply renaming OPA is not a "viable solution under the law." See The White House, Press Release, *President Obama Announces Key White House Posts* (Jan. 24, 2014), available at <http://www.whitehouse.gov/the-press-office/2014/01/24/president-obama-announces-key-white-house-posts>; see also U.S. Office of Special Counsel, *Investigation of Political Activities by White House and Federal Agency Officials During the 2006 Midterm Elections* (Jan. 2011), available at <http://www.scribd.com/doc/47501194/STP-Report-Final> [hereinafter OSC Report].

⁸ Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to Denis McDonough, Chief of Staff, White House (March 18, 2014).

⁹ Letter from Kathryn H. Ruemmler, Counsel to the President, White House, to Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform (March 26, 2014).

¹⁰ Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to Denis McDonough, Chief of Staff, White House (May 27, 2014).

¹¹ Letter from W. Neil Eggleston, Counsel to the President, White House, to Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform (June 13, 2014).

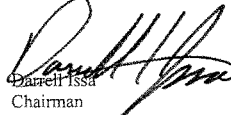
¹² Hearing Invitation from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to David Simas, Director, Office of Political Strategy & Outreach, White House (July 3, 2014).

¹³ OGR report, *supra* note 5; see also OSC Report, *supra* note 6.

Mr. W. Neil Eggleston
July 11, 2014
Page 3

Please contact Committee staff at (202) 225-5074 to schedule a briefing. Thank you for your attention to this matter.

Sincerely,


Darrell Issa
Chairman

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

THE WHITE HOUSE
WASHINGTON

July 14, 2014

The Honorable Darrell E. Issa
Chairman
Committee on Oversight and Government Reform
United States House of Representatives
Washington, DC 20515

Dear Chairman Issa:

I write in response to your letter of July 11, 2014, and the subpoena you issued to David Simas, Assistant to the President and Director of the White House Office of Political Strategy and Outreach (OPSO). In your letter, you accepted my offer to have my staff provide a briefing on OPSO. You requested that the briefing take place before the hearing you have scheduled for Wednesday.

In response to your request, I have directed my staff to arrange to provide that briefing on Tuesday, July 15. I trust that the briefing will answer any remaining questions that you have about how OPSO is complying with the law governing political activity by federal employees, including the Hatch Act.

My willingness to provide you with a briefing on an expedited schedule is another example of the efforts my office has undertaken to provide you with substantial information about OPSO in a manner that appropriately reflects our respective interests. I remain committed to working with you in the same spirit going forward, and hope that you will do the same, should you determine that there are any legitimate oversight concerns that have not been addressed by Tuesday's briefing.

While I am hopeful that we can work together constructively to address your stated interests, your subpoena is not helpful to these efforts. As you know, it has been the view of Administrations from both political parties that summoning the President's most senior advisors to provide public testimony raises significant separation of powers concerns. The Committee's effort to compel Mr. Simas's testimony threatens longstanding interests of the Executive Branch in preserving the President's independence and autonomy and his ability to obtain candid advice and counsel to aid him in the discharge of his constitutional duties. Your decision to pursue this course of action is precipitate and surprising in light of our clear willingness to work with you to meet your informational needs and the fact that you have not pointed to any evidence that OPSO has violated the Hatch Act. Moreover, your subpoena, which directs Mr. Simas to appear at a public hearing three business days after it was issued, unnecessarily constrains our ability to work together by limiting the time we have to explore mutually-agreeable ways to provide you with the information you seek. Consequently, I ask that you lift the subpoena to Mr. Simas immediately so that we can continue to discuss how to address appropriately any remaining concerns you may have following Tuesday's briefing.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Neil Eggleston". The signature is fluid and cursive, with the first name "W. Neil" and last name "Eggleston" clearly distinguishable.

W. Neil Eggleston

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Carolyn Lerner, Special Counsel
U.S. Office of Special Counsel

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STAFF DIRECTOR

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VACANCY

July 15, 2014

Mr. W. Neil Eggleston
Counsel to the President
The White House
Washington, D.C. 20500

Dear Mr. Eggleston:

The Clinton White House, Bush White House, and other administrations before them have all faced congressional oversight of political activity supported by taxpayer funds. Under this Administration, like previous Administrations, members of President Obama's cabinet have committed violations of the Hatch Act, which draws a line between campaign and official business.

Today, my staff received a briefing from White House staff regarding the activities of the White House Office of Political Strategy and Outreach (OPSO) as well as Hatch Act compliance. White House officials provided this briefing to Committee staff nearly four months after I initially wrote to the White House on March 18, 2014, requesting documents and information related to the reopening of the White House Office of Political Affairs (OPA), as well as a briefing.¹ Despite having multiple opportunities before now to provide requested documents and a briefing to Committee staff, the White House only offered a briefing after I subpoenaed testimony from David Simas, the Director of the White House OPSO, at tomorrow's full Committee hearing regarding OPSO.² The briefing provided to Committee staff today, while helpful and appreciated, did not answer all questions and did not put the White House on the record about changes made to its political office.

During the briefing, White House staff declined our request to discuss compliance with the Committee's document requests or to even describe the process and identify relevant officials involved in the decision to reopen the White House political office. While they took issue with some media characterizations of the office, they were unable to say whether or not the White House pursued corrections.

¹ Letter from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to Denis McDonough, Chief of Staff, The White House (Mar. 18, 2014).

² Hearing Invitation from Hon. Darrell E. Issa, Chairman, H. Comm. on Oversight & Gov't Reform, to David Simas, Director, Office of Political Strategy & Outreach, The White House (July 3, 2014).

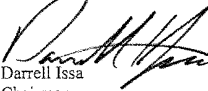
Mr. W. Neil Eggleston
July 15, 2014
Page 2

In prior administrations, White House political officials have encountered difficulties squaring their activities with the prohibitions on political or campaign-related activities of federal officials outlined in the Hatch Act. It strains credulity that this Administration has, in contrast to its predecessors, uniquely resolved all concerns about political activity and should not be subject to the same level of congressional oversight requests for testimony and documents as previous administrations.

The Committee has outstanding questions for Mr. Simas, who did not take part in the briefing, and it is necessary for him to appear at tomorrow's hearing. Mr. Simas is still under subpoena and is expected to appear at tomorrow's hearing. I believe his on-the-record testimony will provide valuable insight into White House efforts to ensure appropriate use of taxpayer funds.

If you have any questions, please contact Committee staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa
Chairman

cc: The Honorable Elijah E. Cummings, Ranking Minority Member